

AMENDED IN ASSEMBLY MAY 28, 2010
AMENDED IN ASSEMBLY FEBRUARY 4, 2010
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1601

Introduced by Assembly Member Hill

(Principal coauthor: Assembly Member Nava)

(Principal coauthors: Senators Harman, Liu, and Maldonado)

(Coauthors: Assembly Members Bill Berryhill, Blakeslee, Block, Blumenfield, Evans, Fong, Gilmore, Huber, Huffman, Knight, Ma, Monning, Portantino, Smyth, Audra Strickland, Torlakson, and Tran)

(Coauthor: Senator Cox)

January 4, 2010

An act to amend ~~Sections 23217, 23540, 23546, 23550, 23550.5, 23560, and 23566~~ *Section 23665* of, and to add Section 23597 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1601, as amended, Hill. Vehicles: driving under the influence: repeat offenders.

(1) Existing law requires, if a person is convicted of a specified driving under the influence (DUI) offense and the offense occurred within 10 years of 2, or 3 or more, prior specified DUI offenses that resulted in a conviction, that the person be punished by enhanced penalties, and that the person's privilege to operate a motor vehicle be revoked by the department for a period of 2, 3, 4, or 5 years, as applicable.

~~This bill would delete the 10-year limitation.~~

(2) Existing law authorizes the court to impose specified additional orders on a person when the person is convicted of a ~~DUI~~ *driving-under-the-influence (DUI)* offense, depending on the circumstances.

This bill would authorize the court to order ~~the permanent revocation~~ *a 10-year revocation* of the driver's license of a person who was previously convicted of 3 or more specified DUI offenses if the court considers certain factors, including, but not limited to, the period of time that has elapsed since his or her previous DUI convictions. *The bill would authorize the person to apply to the Department of Motor Vehicles, 5 years from the date of the last DUI conviction, to have his or her privilege to operate a motor vehicle reinstated subject to certain conditions, including, among other things, the condition that the person was not convicted of any other drug- or alcohol-related offenses, under state law, during the driver's license revocation period.*

(3) Existing law authorizes a court to postpone the revocation or suspension of a person's driving privilege until the term of imprisonment is served, if that person was convicted of certain DUI provisions, among other things, and sentenced to serve one year in a county jail or more than one year in a state prison.

This bill would instead require the court to postpone the revocation or suspension of a person's driving privilege until the term of imprisonment is served, and notify the department of the postponement, if that person was convicted of certain DUI provisions and sentenced to serve any time in a county jail or state prison.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 23217 of the Vehicle Code is amended~~
2 ~~to read:~~
3 ~~23217. The Legislature finds and declares that some repeat~~
4 ~~offenders of the prohibition against driving under the influence of~~
5 ~~alcohol or drugs, when they are addicted or when they have too~~
6 ~~much alcohol in their systems, may be escaping the intent of the~~
7 ~~Legislature to punish the offender with progressively greater~~
8 ~~severity if the offense is repeated one or more times. This situation~~
9 ~~may occur when a conviction for a subsequent offense occurs~~
10 ~~before a conviction is obtained on an earlier offense.~~

1 ~~The Legislature further finds and declares that the timing of~~
2 ~~court proceedings should not permit a person to avoid aggravated~~
3 ~~mandatory minimum penalties for multiple separate offenses. It~~
4 ~~is the intent of the Legislature to provide that a person be subject~~
5 ~~to enhanced mandatory minimum penalties for multiple offenses,~~
6 ~~regardless of when the convictions for those offenses are obtained.~~

7 ~~Nothing in this section requires consideration of judgment of~~
8 ~~conviction in a separate proceeding that is entered after the~~
9 ~~judgment in the present proceeding, except as it relates to violation~~
10 ~~of probation.~~

11 ~~Nothing in this section or the amendments to Section 23540,~~
12 ~~23546, 23550, 23560, 23566, 23622, or 23640 made by Chapter~~
13 ~~1205 of the Statutes of 1984 affects the penalty for a violation of~~
14 ~~Section 23152 or 23153 occurring prior to January 1, 1985.~~

15 ~~SEC. 2. Section 23540 of the Vehicle Code is amended to read:~~

16 ~~23540. (a) If a person is convicted of a violation of Section~~
17 ~~23152 and the person was previously convicted of a separate~~
18 ~~violation of Section 23103, as specified in Section 23103.5, 23152,~~
19 ~~or 23153, that resulted in a conviction, that person shall be~~
20 ~~punished by imprisonment in the county jail for not less than 90~~
21 ~~days nor more than one year and by a fine of not less than three~~
22 ~~hundred ninety dollars (\$390) nor more than one thousand dollars~~
23 ~~(\$1,000). The person's privilege to operate a motor vehicle shall~~
24 ~~be suspended by the department pursuant to paragraph (3) of~~
25 ~~subdivision (a) of Section 13352. The court shall require the person~~
26 ~~to surrender the driver's license to the court in accordance with~~
27 ~~Section 13550.~~

28 ~~(b) Whenever, when considering the circumstances taken as a~~
29 ~~whole, the court determines that the person punished under this~~
30 ~~section would present a traffic safety or public safety risk if~~
31 ~~authorized to operate a motor vehicle during the period of~~
32 ~~suspension imposed under paragraph (3) of subdivision (a) of~~
33 ~~Section 13352, the court may disallow the issuance of a restricted~~
34 ~~driver's license required under Section 13352.5.~~

35 ~~SEC. 3. Section 23546 of the Vehicle Code is amended to read:~~

36 ~~23546. (a) If a person is convicted of a violation of Section~~
37 ~~23152 and the person was previously convicted of two separate~~
38 ~~violations of Section 23103, as specified in Section 23103.5, 23152,~~
39 ~~or 23153, or any combination thereof, that resulted in convictions,~~
40 ~~that person shall be punished by imprisonment in the county jail~~

1 for not less than 120 days nor more than one year and by a fine of
2 not less than three hundred ninety dollars (\$390) nor more than
3 one thousand dollars (\$1,000). The person's privilege to operate
4 a motor vehicle shall be revoked by the Department of Motor
5 Vehicles as required in paragraph (5) of subdivision (a) of Section
6 13352. The court shall require the person to surrender his or her
7 driver's license to the court in accordance with Section 13550.

8 (b) A person convicted of a violation of Section 23152
9 punishable under this section shall be designated as a habitual
10 traffic offender for a period of three years, subsequent to the
11 conviction. The person shall be advised of this designation pursuant
12 to subdivision (b) of Section 13350.

13 SEC. 4. Section 23550 of the Vehicle Code, as amended by
14 Section 4 of Chapter 193 of the Statutes of 2009, is amended to
15 read:

16 23550. (a) If a person is convicted of a violation of Section
17 23152 and the person was previously convicted of three or more
18 separate violations of Section 23103, as specified in Section
19 23103.5, or Section 23152 or 23153, or any combination thereof,
20 that resulted in convictions, that person shall be punished by
21 imprisonment in the state prison, or in a county jail for not less
22 than 180 days nor more than one year, and by a fine of not less
23 than three hundred ninety dollars (\$390) nor more than one
24 thousand dollars (\$1,000). The person's privilege to operate a
25 motor vehicle shall be revoked by the Department of Motor
26 Vehicles pursuant to paragraph (9) of subdivision (a) of Section
27 13352. The court shall require the person to surrender the driver's
28 license to the court in accordance with Section 13550.

29 (b) A person convicted of a violation of Section 23152
30 punishable under this section shall be designated as a habitual
31 traffic offender for a period of three years, subsequent to the
32 conviction. The person shall be advised of this designation pursuant
33 to subdivision (b) of Section 13350.

34 SEC. 5. Section 23550.5 of the Vehicle Code, as amended by
35 Section 5 of Chapter 193 of the Statutes of 2009, is amended to
36 read:

37 23550.5. (a) A person is guilty of a public offense, punishable
38 by imprisonment in the state prison or confinement in a county
39 jail for not more than one year and by a fine of not less than three
40 hundred ninety dollars (\$390) nor more than one thousand dollars

1 (\$1,000) if that person is convicted of a violation of Section 23152
2 or 23153, and the person was previously convicted of any of the
3 following:

4 (1) A prior violation of Section 23152 that was punished as a
5 felony under Section 23550 or this section, or both, or under former
6 Section 23175 or former Section 23175.5, or both.

7 (2) A prior violation of Section 23153 that was punished as a
8 felony.

9 (3) A prior violation of paragraph (1) of subdivision (c) of
10 Section 192 of the Penal Code that was punished as a felony.

11 (b) Each person who, having previously been convicted of a
12 violation of subdivision (a) of Section 191.5 of the Penal Code, a
13 felony violation of subdivision (b) of Section 191.5, or a violation
14 of subdivision (a) of Section 192.5 of the Penal Code, is
15 subsequently convicted of a violation of Section 23152 or 23153
16 is guilty of a public offense punishable by imprisonment in the
17 state prison or confinement in a county jail for not more than one
18 year and by a fine of not less than three hundred ninety dollars
19 (\$390) nor more than one thousand dollars (\$1,000).

20 (c) The privilege to operate a motor vehicle of a person
21 convicted of a violation that is punishable under subdivision (a)
22 or (b) shall be revoked by the department under paragraph (9) of
23 subdivision (a) of Section 13352, unless paragraph (8) of
24 subdivision (a) of Section 13352 is also applicable, in which case
25 the privilege shall be revoked under that provision. The court shall
26 require the person to surrender the driver's license to the court in
27 accordance with Section 13550.

28 (d) A person convicted of a violation of Section 23152 or 23153
29 that is punishable under this section shall be designated as a
30 habitual traffic offender for a period of three years, subsequent to
31 the conviction. The person shall be advised of this designation
32 under subdivision (b) of Section 13350.

33 SEC. 6. Section 23560 of the Vehicle Code is amended to read:
34 23560. If a person is convicted of a violation of Section 23153
35 and the person was previously convicted of a separate violation
36 of Section 23103, as specified in Section 23103.5, 23152, or 23153
37 that resulted in a conviction, that person shall be punished by
38 imprisonment in the state prison, or in a county jail for not less
39 than 120 days nor more than one year, and by a fine of not less
40 than three hundred ninety dollars (\$390) nor more than five

1 thousand dollars (\$5,000). The person's privilege to operate a
2 motor vehicle shall be revoked by the Department of Motor
3 Vehicles pursuant to paragraph (4) of subdivision (a) of Section
4 13352. The court shall require the person to surrender the driver's
5 license to the court in accordance with Section 13550.

6 SEC. 7. Section 23566 of the Vehicle Code, as amended by
7 Section 7 of Chapter 193 of the Statutes of 2009, is amended to
8 read:

9 23566. (a) If a person is convicted of a violation of Section
10 23153 and the person was previously convicted of two or more
11 separate violations of Section 23103, as specified in Section
12 23103.5, or Section 23152 or 23153, or any combination of these
13 violations, that resulted in convictions, that person shall be
14 punished by imprisonment in the state prison for a term of two,
15 three, or four years and by a fine of not less than one thousand
16 fifteen dollars (\$1,015) nor more than five thousand dollars
17 (\$5,000). The person's privilege to operate a motor vehicle shall
18 be revoked by the Department of Motor Vehicles pursuant to
19 paragraph (8) of subdivision (a) of Section 13352. The court shall
20 require the person to surrender the driver's license to the court in
21 accordance with Section 13550.

22 (b) If a person is convicted of a violation of Section 23153, and
23 the act or neglect proximately causes great bodily injury, as defined
24 in Section 12022.7 of the Penal Code, to any person other than the
25 driver, and the person was previously convicted of two or more
26 separate violations of Section 23103, as specified in Section
27 23103.5, or Section 23152 or 23153, or any combination of these
28 violations, that resulted in convictions, that person shall be
29 punished by imprisonment in the state prison for a term of two,
30 three, or four years and by a fine of not less than one thousand
31 fifteen dollars (\$1,015) nor more than five thousand dollars
32 (\$5,000). The person's privilege to operate a motor vehicle shall
33 be revoked by the Department of Motor Vehicles pursuant to
34 paragraph (8) of subdivision (a) of Section 13352. The court shall
35 require the person to surrender the driver's license to the court in
36 accordance with Section 13550.

37 (c) If a person is convicted under subdivision (b), and the person
38 was previously convicted of four or more separate violations of
39 Section 23103, as specified in Section 23103.5, or Section 23152
40 or 23153, or any combination of these violations, that resulted in

1 convictions, that person shall, in addition and consecutive to the
2 sentences imposed under subdivision (b), be punished by an
3 additional term of imprisonment in the state prison for three years.

4 The enhancement allegation provided in this subdivision shall
5 be pleaded and proved as provided by law.

6 (d) ~~A person convicted of Section 23153 punishable under this~~
7 ~~section shall be designated as a habitual traffic offender for a period~~
8 ~~of three years, subsequent to the conviction. The person shall be~~
9 ~~advised of this designation pursuant to subdivision (b) of Section~~
10 ~~13350.~~

11 (e) ~~A person confined in state prison under this section shall be~~
12 ~~ordered by the court to participate in an alcohol or drug program,~~
13 ~~or both, that is available at the prison during the person's~~
14 ~~confinement. Completion of an alcohol or drug program under this~~
15 ~~section does not meet the program completion requirement of~~
16 ~~paragraph (8) of subdivision (a) of Section 13352, unless the drug~~
17 ~~or alcohol program is licensed under Section 11836 of the Health~~
18 ~~and Safety Code, or is a program specified in Section 8001 of the~~
19 ~~Penal Code.~~

20 ~~SEC. 8.~~

21 *SECTION 1.* Section 23597 is added to the Vehicle Code, to
22 read:

23 23597. (a) Notwithstanding Sections 13202.5, 13203, and
24 13352, a court may order ~~the permanent~~ *a 10-year* revocation of
25 the driver's license of a person who was previously convicted of
26 three or more separate violations of Section 23152 or 23153. When
27 making this order, the court shall consider all of the following:

- 28 (1) The person's level of remorse for the acts.
29 (2) The period of time that has elapsed since the person's
30 previous convictions.
31 (3) The person's blood-alcohol level at the time of the violation.
32 (4) The person's participation in an alcohol treatment program.
33 (5) The person's risk to traffic or public safety.
34 (6) The person's ability to install a certified ignition interlock
35 device in each motor vehicle that he or she owns or operates.

36 (b) Upon receipt of a duly certified abstract of the record of the
37 court showing the court has ordered ~~permanent~~ *a 10-year*
38 revocation of a driver's license pursuant to this section, the
39 department shall ~~permanently~~ revoke the person's driver's license
40 *for 10 years, except as provided in subdivision (c).*

1 (c) (1) Five years from the date of the last conviction of a
2 violation of Section 23152 or 23153, a person whose license was
3 revoked pursuant to subdivision (a) may apply to the department
4 to have his or her privilege to operate a motor vehicle reinstated,
5 subject to the condition that the person submits the "Verification
6 of Installation" form described in paragraph (2) of subdivision
7 (h) of Section 13386 and agrees to maintain the ignition interlock
8 device as required under subdivision (g) of Section
9 23575. Notwithstanding Chapter 5 (commencing with Section
10 23700) or subdivision (f) of Section 23575, the ignition interlock
11 device shall remain on the person's motor vehicle for two years
12 following the reinstatement of the person's driving privilege
13 pursuant to this section.

14 (2) The department shall reinstate the person's license pursuant
15 to paragraph (1), if the person satisfies all of the following
16 conditions:

17 (A) The person was not convicted of any drug- or alcohol-related
18 offenses, under state law, during the driver's license revocation
19 period.

20 (B) The person successfully completed a
21 driving-under-the-influence program, licensed pursuant to Section
22 11836 of the Health and Safety Code, following the date of the last
23 conviction of a violation of Section 23152 or 23153.

24 (C) The person was not convicted of violating Section 14601,
25 14601.1, 14601.2, 14601.4, or 14601.5 during the driver's license
26 revocation period.

27 SEC. 2. Section 23665 of the Vehicle Code is amended to read:

28 23665. (a) If a person is convicted of a violation of Section
29 20001, ~~or of Section 23152 or 23153~~ and is sentenced to one year
30 in a county jail or more than one year in the state prison under
31 Section 23540, 23542, 23546, 23548, 23550, 23550.5, 23552,
32 23554, 23556, 23558, 23560, 23562, 23566, or 23568, the court
33 may postpone the revocation or suspension of the person's driving
34 privilege until the term of imprisonment is served.

35 ~~(b) This section shall become operative on September 20, 2005.~~

36 (b) If a person is convicted of a violation of Section 23152 or
37 23153 and is sentenced to serve time in a county jail or state prison
38 under Section 23540, 23542, 23546, 23548, 23550, 23550.5, 23552,
39 23554, 23556, 23558, 23560, 23562, 23566, or 23568, the court
40 shall postpone the revocation or suspension of the person's driving

- 1 *privilege until the term of imprisonment is served and shall notify*
- 2 *the department of the postponement.*

O